

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 50 2017 CA 005938 XXXX MB AJ
JUDGE DAVID E. FRENCH

JOHN F. DOWNS, MARGARET T. DOWNS,
ELIZABETH DOWNS, and DOROTHY DOWNS,

Plaintiffs,

vs.

WILLIAM J. CHANDLER and RACHEL A.
CHANDLER,

Defendants.

_____ /

DEFENDANTS' THIRD-PARTY COMPLAINT

Pursuant to Fla. R. Civ. P. 1.180(a), Defendants/Third-Party Plaintiffs, William J. Chandler and Rachel A. Chandler (the "Chandlers"), file this Third-Party Complaint against Third-Party Defendant North Palm Beach Properties, Inc. (the "Third-Party Defendant"), and state as follows:

Nature of Action

1. This Third-Party Complaint is based on a claim for indemnification arising out of a breach of warranty and/or misrepresentation.

Jurisdiction, Parties, and Venue

2. The Chandlers reside in Palm Beach County, Florida and are otherwise sui juris.
3. The Third-Party Defendant is a Florida corporation with its principal place of business located in Tampa, Florida, but who conducts business in Palm Beach County, Florida, and owns property in Palm Beach County, Florida.

4. This is an action for damages exceeding \$15,000.00, exclusive of interest, fees and costs.

5. Venue is property in this Court.

General Allegations

6. On March 27, 2017, Third-Party Defendant conveyed the Chandlers the real property more particular described in the attached warranty deed (the "Warranty Deed") in exchange for \$40,000.00. A copy of the Warranty Deed is attached hereto as **Exhibit "A."**

7. As set forth in the Warranty Deed, the Third-Party Defendant promised, amongst other things, that it was the rightful owner of the Property and had good right and lawful authority to sell and convey the Property to the Chandlers.

8. The Chandlers, at all times material hereto, relied on the Third-Party Defendant's representation and warranty that it was the owner of the Property.

9. As a result of these representations and warranties, the Chandlers purchased the Property from the Third-Party Defendant, and tendered \$40,000.00 to the Third-Party Defendant towards the purchase of the Property.

10. The real property conveyed by Third-Party Defendant to the Chandlers via the Warranty Deed will be referred to herein as the "Property."

11. The Property is situated to the north of the real property more particularly described as:

Lot 9, Block 30, VILLAGE OF NORTH PALM BEACH, Plat #3, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, as in Plat Book 25, Pages 175 and 176 ("Lot 9").

12. It is undisputed that the Plaintiffs in the underlying action own Lot 9.

13. A depiction of Lot 9 and the Property, as seen from the Plat, is attached hereto as **Exhibit "B."**

14. After purchasing the Property from the Third-Party Defendant, Plaintiffs filed the underlying lawsuit claiming, at first, that they had certain prescriptive easement rights over the Property.

15. On November 2, 2017, Plaintiffs filed their Second Amended Complaint, and added a claim for quiet title to the Property.

16. According to the Plaintiffs, their chain of title proves that they are the true owners of the Property.

17. As set forth in the Warranty Deed, the Third-Party Defendant promised to convey fee simple title to the Property subject only to easements, restrictions and reservations of record and taxes for the year 2004 and thereafter.

18. The Warranty Deed further provides that the Third-Party Defendant would defend the Chandlers against any claims by third-parties for the Property.

19. The Chandlers have demanded that the Third-Party Defendant defend against the claims brought by Plaintiffs; however, the Third-Party Defendant has refused to do so.

20. The Chandlers dispute that Plaintiffs are the title owners of the Property; however, to the extent the Chandlers are incorrect, that would mean the Third-Party Defendant sold the Chandlers the Property despite not owning the same.

21. All conditions precedent to this action have occurred, have been satisfied, or have been waived.

Count I – Contractual Indemnification

22. The Chandlers reallege the allegations in paragraphs 1 through 19 above as if fully set forth herein.

23. Via the Warranty Deed, Third-Party Defendant expressly promised to indemnify the Chandlers against the claims brought by Plaintiffs in the underlying lawsuit.

24. The Third-Party Defendant has breached its obligation by refusing to indemnify and defend against the claims brought by the Plaintiffs in the underlying action.

WHEREFORE, the Chandlers request that a judgment be entered in their favor and against Third-Party Defendant indemnifying the Chandlers for all damages, interest, costs, and attorneys' fees incurred in connection with the underlying action, and for all other and further relief as this Court deems just and proper.

Count II – Common Law Indemnification

25. The Chandlers reallege the allegations in paragraphs 1 through 19 above as if fully set forth herein.

26. The Chandlers, relying on the representations and warranties from the Third-Party Defendant, purchased the Property from the Third-Party Defendant; thus, the parties enjoyed a special relationship.

27. The Chandlers tendered \$40,000.00 to Third-Party Defendant for the purchase of the Property, and in exchange, Third-Party Defendant promised to convey the Property to the Chandlers.

28. To the extent the Plaintiffs in the underlying action are the rightful owners of the Property, the Chandlers are without fault.

29. Third-Party Defendant is the cause of any and all damages which may be assessed against the Chandlers, including but not limited to the Chandlers loss of the Property, as a result of Plaintiffs' claims.

30. In the event the Plaintiffs do prevail in the underlying action, Third-Party Defendant should be held responsible for any and all losses suffered by the Chandlers, including but not limited to, a refund of the purchase price.

WHEREFORE, the Chandlers request that this Court enter a judgment in their favor and against Third-Party Defendant indemnifying the Chandlers for all damages, interest, costs, and attorneys' fees incurred in connection with the underlying action brought by Plaintiffs, and for other and further relief, including all equitable relief, that this Court deems just and proper and equitable.

Count III – Breach of Warranty

31. The Chandlers reallege the allegations in paragraphs 1 through 19 above as if fully set forth herein.

32. Via the Warranty Deed, Third-Party Defendant promised to convey fee simple title to the Property subject only to easements, restrictions and reservations of record and taxes for the year 2004 and thereafter.

33. To the extent the Plaintiffs are correct in their assertion that they are the rightful owner of the Property, Third-Party Defendant breached the Warranty Deed in failing to convey the Property to the Chandlers.

34. To the extent the Plaintiffs are correct in their assertion that they have a prescriptive easement over the Property, Third-Party Defendant breached the Warranty Deed.

35. The Chandlers have suffered damages as a result of the aforementioned breaches.

WHEREFORE, the Chandlers request that this Court enter a judgment in their favor and against Third-Party Defendant for all damages sustained as a result of the breach, interest, costs, attorneys' fees incurred in connection with having to defend against the claims by Plaintiffs, and all other relief this Court deems just and proper.

Respectfully submitted,

PADULA BENNARDO LEVINE, LLP
Attorneys for Defendants
3837 NW Boca Raton Blvd., Suite 200
Boca Raton, Florida 33431
Telephone No. 561.544.8900
Facsimile No. 561.544.8999

DATED: February 20, 2018

By: /s/ Joshua S. Widlansky
JOSHUA S. WIDLANSKY
Florida Bar No. 45197
Email: JSW@PBL-Law.com
STEPHEN J. PADULA
Florida Bar No. 182362
Email: SJP@PBL-Law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by the Florida Courts E-Filing Portal via Email abaumann@llw-law.com; sbehn@llw-law.com; apetrick@llw-law.com to: **Andrew J. Bauman, Esquire, Seth C. Behn, Esquire, Amy Taylor Petrick, Esquire**, Lewis, Longman & Walker, P.A., 515 North Flagler Drive, Suite 1500, West Palm Beach, Florida 33401; **and** via Email jwallace@llw-law.com; dreichard@llw-law.com to: **John W. Wallace, Esquire**, Lewis, Longman & Walker, P.A., 245 Riverside Avenue, Suite 150, Jacksonville, Florida 32202, on this 20th day of February, 2018.

By: /s/ Joshua S. Widlansky
JOSHUA S. WIDLANSKY

EXHIBIT “A”



CFN 20170123450

OR BK 29005 PG 0767
 RECORDED 04/10/2017 11:54:31
 AMT 40,000.00
 Doc Stamp 280.00
 Palm Beach County, Florida
 Sharon R. Bock, CLERK & COMPTROLLER
 Pgs 0767 - 769; (3pgs)

THIS INSTRUMENT PREPARED BY AND RETURN TO:

PRODUCERS' TITLE SERVICES, LLC
 2101 VISTA PARKWAY, SUITE 253
 WEST PALM BEACH, FL 33411
 Property Appraisers Parcel Identification (Folio) Numbers:

Space Above This Line For Recording Data

THIS WARRANTY DEED, made the 27th day of March, 2017 by NORTH PALM BEACH PROPERTIES, INC., A FLORIDA CORPORATION, whose post office address is 13907 CARROLWOOD VILLAGE RUN, TAMPA, FL 33618 herein called the grantor, to WILLIAM J. CHANDLER and RACHEL A. CHANDLER, HUSBAND & WIFE, whose post office address is 753 Hummingbird Way #3 North Palm Beach FL 33408 hereinafter called the grantees:
 (I have used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in PALM BEACH County, State of Florida, viz.:

SEE "EXHIBIT A" ATTACHED

Subject to easements, restrictions and reservations of record and taxes for the year 2004 and thereafter.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the grantor hereby covenants with said grantees that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2003.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of

Dulce M. Garcia
 Witness #1 Signature

Dulce M. Garcia
 Witness #1 Printed Name

Jim Oventon
 Witness #2 Signature

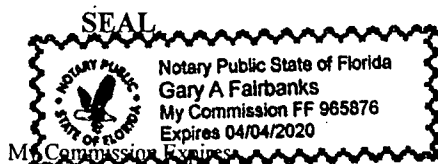
Jim Oventon
 Witness #2 Printed Name

NORTH PALM BEACH PROPERTIES, INC., A
 FLORIDA CORPORATION

[Signature]
 KIM SCHWENCKE, PRESIDENT

STATE OF FLORIDA
 COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 27th day of March, 2017 by KIM SCHWENCKE AS PRESIDENT OF NORTH PALM BEACH PROPERTIES, INC. who is personally known to me, or has produced as identification.



Gary A. Fairbanks
 Notary Public
GARY A. FAIRBANKS
 Printed Notary Name

EXHIBIT A

PARCEL A

70' STRIP OF CANAL RIGHT OF WAY LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN SECTION 17, TOWNSHIP 42 SOUTH, RANGE 43 EAST, BEING A PORTION OF THE CANAL C-17 OF CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT EASEMENT AS PER DEED BOOKS 1156 AND 1163, PAGES 186 AND 294, LYING NORTHERLY OF AND ADJOINING LOT 10, BLOCK 30, AS SHOWN ON PLAT 3, VILLAGE OF NORTH PALM BEACH, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, AS IN PLAT BOOK 25, PAGES 175 AND 176 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 10, BLOCK 30; THENCE NORTH 22°34'43" EAST ALONG THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 10, BLOCK 30, THE WESTERLY LINE OF SAID LOT 10, BLOCK 30, IS ASSUMED TO BEAR NORTH 22°34'43" EAST AND ALL OTHER BEARINGS ARE RELATIVE THERETO, A DISTANCE OF 70.00 FEET TO THE INTERSECTION WITH A LINE PARALLEL WITH AND 70.00 FEET NORTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTHERLY LINE OF SAID LOT 10, BLOCK 30; THENCE SOUTH 67°25'17" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 80.00 FEET TO THE INTERSECTION WITH THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 10, BLOCK 30; THENCE SOUTH 22°34'43" WEST ALONG THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 10, BLOCK 30, A DISTANCE OF 70.00 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 10, BLOCK 30; THENCE NORTH 67°25'17" WEST ALONG THE NORTHERLY LINE OF SAID LOT 10, BLOCK 30, A DISTANCE OF 80.00 FEET, TO THE POINT OF BEGINNING.

EXHIBIT A CONTINUED

PARCEL B

79' STRIP OF CANAL RIGHT OF WAY LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN SECTION 17, TOWNSHIP 42 SOUTH, RANGE 43 EAST, BEING A PORTION OF THE CANAL C-17 OF CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT EASEMENT AS PER DEED BOOKS 1156 AND 1163, PAGES 186 AND 294, LYING NORTHERLY OF LOT 9, BLOCK 30, AS SHOWN ON PLATS 2 AND 3, VILLAGE OF NORTH PALM BEACH, ACCORDING TO THE PLATS THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, AS IN PLAT BOOK 25, PAGE 59 AND PLAT BOOK 25, PAGES 175 AND 176 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID LOT 9, BLOCK 30; THENCE NORTH 22° 34' 43" EAST ALONG THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 9, BLOCK 30, THE WESTERLY LINE OF SAID LOT 9, BLOCK 30, IS ASSUMED TO BEAR NORTH 22° 34' 43" EAST AND ALL OTHER BEARINGS ARE RELATIVE THERETO, A DISTANCE OF 70.00 FEET TO THE INTERSECTION WITH A LINE PARALLEL WITH AND 70.00 FEET NORTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTHERLY LINE OF SAID LOT 9, BLOCK 30 AND BEING THE POINT OF BEGINNING; THENCE CONTINUE NORTH 22° 34' 43" EAST ALONG THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 9, BLOCK 30, A DISTANCE OF 79.00 FEET TO THE INTERSECTION WITH A LINE PARALLEL WITH AND 149.00 FEET NORTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTHERLY LINE OF SAID LOT 9, BLOCK 30; THENCE SOUTH 67° 25' 17" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 80.00 FEET TO THE INTERSECTION WITH THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 9, BLOCK 30; THENCE SOUTH 22° 34' 43" WEST ALONG THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 9, BLOCK 30, A DISTANCE OF 79.00 FEET TO THE INTERSECTION WITH SAID LINE PARALLEL WITH AND 70.00 FEET NORTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTHERLY LINE OF SAID LOT 9, BLOCK 30; THENCE NORTH 67° 25' 17" WEST ALONG SAID LINE PARALLEL WITH AND 70.00 FEET NORTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTHERLY LINE OF SAID LOT 9, BLOCK 30, A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT “B”

Highlighted portion is
Lot 9

176

VILLAGE OF NORTH PALM BEACH

PLAT NO. 3

IN 2 SHEETS

SHEET NO. 2

Scale 1"=100'

Property

